



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-140789-12]

RIN 1545-BL42

Information Reporting for Affordable Insurance Exchanges

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to requirements for Affordable Insurance Exchanges (Exchanges) to report information relating to the health insurance premium tax credit enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010. These proposed regulations affect Exchanges that make qualified health plans available to individuals and employers.

DATES: Written (including electronic) comments and requests for a public hearing must be received by **[INSERT DATE 60 DAYS AFTER PUBLICATION OF THIS**

DOCUMENT IN THE FEDERAL REGISTER].

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-140789-12), Room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-140789-12), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC, or sent electronically via the

Federal eRulemaking Portal at www.regulations.gov (IRS REG-140789 -12).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Arvind Ravichandran, (202) 622-4920; concerning the submission of comments, and/or requests for a public hearing, Oluwafunmilayo Taylor, (202) 622-7180 (not toll-free calls).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking is covered under OMB Control Number 1545-2232 and will be submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by **[INSERT DATE 60 DAYS AFTER PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in these proposed regulations is in §1.36B-5 and will be reported on Form 1095-A. The collection of information is necessary to compute the premium tax credit and to reconcile the amount of the premium tax credit with advance credit payments made under section 1412 of the Patient Protection and Affordable Care Act (42 U.S.C. 18082). The collection of information is required to comply with the provisions of section 36B(f)(3) of the Internal Revenue Code (Code). The likely respondents are Exchanges established under section 1311 or 1321 of the Patient Protection and Affordable Care Act (42 U.S.C. 13031 or 42 U.S.C. 18041).

The estimated total annual reporting burden is 12,060 hours. The estimated annual burden per respondent is 670 hours and the estimated number of respondents is 18.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Background

Beginning in 2014, under the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), and the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)) (collectively, the Affordable

Care Act), individuals and small businesses will be able to purchase private health insurance through competitive marketplaces called Exchanges (also called Health Insurance Marketplaces). Section 1401 of the Affordable Care Act enacted section 36B, allowing a refundable premium tax credit to help individuals and families afford health insurance purchased through an Exchange. The section 36B credit makes health insurance affordable by reducing a taxpayer's out-of-pocket premium cost.

Under section 1411 of the Affordable Care Act (42 U.S.C. 18081), an Exchange makes an advance determination of credit eligibility for individuals enrolling in coverage through the Exchange and seeking financial assistance. Using information available at the time of enrollment, the Exchange determines (1) whether the individual meets the income and other requirements for advance credit payments, and (2) the amount of the advance payments. Advance credit payments are made monthly under section 1412 of the Affordable Care Act (42 U.S.C. 18082) to the issuer of the qualified health plan in which the individual enrolls.

Under section 36B(f)(1), taxpayers who receive advance credit payments must reconcile the amount of the advance payment with the amount of the premium tax credit computed on the taxpayer's income tax return. A taxpayer who receives excess advance payments must treat the excess amount as additional tax under section 36B(f)(2). Taxpayers whose credit amount exceeds the amount of advance payments for the taxable year may receive the excess as additional credit. Taxpayers who do not seek advance credit payments also may claim the premium tax credit on the income tax return.

Section 36B(f)(3) directs Exchanges to report to the IRS and to taxpayers certain

information required to reconcile the premium tax credit with advance credit payments and to administer the premium tax credit generally. The required information relates to the enrollment of a taxpayer and taxpayer's family in a qualified health plan through the Exchange and includes (1) the level of coverage, (2) identifying information for the primary insured and each enrollee, (3) the amount of premiums and advance credit payments for the coverage, (4) information (concerning, for example, a change in circumstances) provided to the Exchange necessary to determine eligibility for and the amount of the credit, and (5) other information necessary to determine if a taxpayer has received the appropriate advance credit payments.

Final regulations under section 36B (TD 9590) were issued on May 23, 2012 (77 FR 30377). Section 1.36B-5 identifies the information (primarily based on the statutory language) that Exchanges must report to the IRS and taxpayers and indicates that the time and manner requirements for reporting this information would be provided in subsequent guidance. Accordingly, these proposed regulations amend §1.36B-5, propose detailed rules for information reporting by Exchanges, and describe specific information that has been identified since publication of the final regulations that is necessary for efficient tax administration.

Explanation of Provisions

1. Information Reporting to the IRS

a. Information required to be reported

The proposed regulations require Exchanges to report information concerning individuals enrolled in qualified health plans, including the monthly amount of advance credit payments, if any. Consistent with the statute, the proposed regulations require

Exchanges to report taxpayer identification numbers. It is anticipated that Exchanges will report only Social Security numbers and provide an individual's date of birth if a Social Security number is not available.

b. Time and manner of reporting

The proposed regulations require Exchanges to report the specified information for each qualified health plan electronically to the IRS on an annual and, to facilitate efficient tax administration, a monthly basis, and specify the information that must be reported in each category. Under the proposed regulations, Exchanges must make a monthly report to the IRS on or before the fifteenth day of the month following the month of coverage. The information reported monthly will be cumulative, containing monthly data for each month beginning with January through the most recent completed month. For example, information reported in September will contain information for each month from January through August. The annual report for the calendar year must be made on or before January 31 of the year following the year of coverage. Information for more than one tax household will be on the same annual report if the individuals enroll in one qualified health plan.

2. Statements Furnished to Taxpayers or Responsible Adults

The proposed regulations direct Exchanges to furnish to each taxpayer or responsible adult who enrolled, or whose family member enrolled, in a qualified health plan through the Exchange a written statement that includes the information the Exchange must report to the IRS annually. Exchanges may use Form 1095-A for this statement and must furnish the statement on or before January 31 of the year following the calendar year of coverage.

Section 36B(f)(3) and the proposed regulations require that Exchanges furnish statements only to the individual identified to the Exchange as the taxpayer or the responsible adult. Section 36B information reporting may be included in the IRS truncated taxpayer identification number program, see proposed regulations at 78 FR 913 (January 7, 2013). Comments are requested on whether and under what circumstances Exchanges should furnish a statement to another individual (who may, for example, require the statement to determine tax liability).

The proposed regulations permit electronic delivery of statements to the taxpayer or responsible adult if the taxpayer or responsible adult consents.

The IRS plans to make educational materials available to taxpayers to explain the multiple statements taxpayers may receive under sections 6055, 6056, and 36B.

Effective/Applicability Date

These regulations are proposed to apply for taxable years ending after December 31, 2013. Exchanges and taxpayers may apply these proposed regulations until publication of final regulations or other guidance. The need for additional transition relief will be considered at that time.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information requirement on small entities, the Regulatory Flexibility Act (5

U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the “Addresses” heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at www.regulations.gov or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these proposed regulations are Shareen S. Pflanz and Stephen J. Toomey of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in

numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.36B-0 also issued under 26 U.S.C. 36B(g).

Section 1.36B-5 also issued under 26 U.S.C. 36B(g).

Par. 2. Section 1.36B-0 is amended by revising the entries for §1.36B-5 to read as follows:

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Par. 3. Section 1.36B-5 is revised to read as follows:

§1.36B-5 Information reporting by Exchanges.

(a) In general. An Exchange must report to the Internal Revenue Service (IRS) information required by section 36B(f)(3) and this section relating to the qualified health plans in which individuals enroll.

(b) Information required to be reported--(1) Information reported annually. An Exchange must report to the Internal Revenue Service on or before January 31 of the year following the calendar year of coverage the following information for each qualified health plan in which an individual or a member of the individual's family enrolls through the Exchange--

(i) The name, address, and taxpayer identification number (TIN), or date of birth if a TIN is not available, of an individual enrolling, or enrolling a family member, in coverage and approved for advance credit payments (taxpayer), and the name and TIN of the individual's spouse, if applicable;

(ii) The name, address, and TIN, or date of birth if a TIN is not available, of an adult enrolling in coverage or enrolling one or more members of a family in coverage and either not requesting or not approved for advance credit payments (responsible adult);

(iii) The name and TIN, or date of birth if a TIN is not available, and dates of coverage for each individual covered under the plan;

(iv) The monthly premium for the applicable benchmark plan used to compute advance credit payments;

(v) For a responsible adult, the premium for the applicable benchmark plan that would apply to the individuals enrolled in a qualified health plan;

(vi) The monthly premium for the plan or plans in which a taxpayer, responsible adult, or family member enrolls, without reduction for advance credit payments, including the amount of premiums for a stand-alone dental plan allocated to pediatric dental benefits;

(vii) The amount of the advance credit payments made on a taxpayer's behalf each month;

(viii) The name of the qualified health plan issuer and the issuer's employer identification number (EIN);

(ix) The qualified health plan policy number;

(x) The Exchange's unique identifier; and

(xi) Any other information specified by forms or instructions or in published guidance, see §601.601(d) of this chapter.

(2) Information reported monthly. For each calendar month, an Exchange must report to the Internal Revenue Service, on or before the fifteenth day following each month of coverage, the information described in paragraph (b)(1) of this section and the following information--

(i) Whether the individuals enrolled in the qualified health plan are the taxpayer's dependents;

(ii) Information on employment (to the extent this information is provided to the

Exchange) consisting of--

(A) The name, address, and EIN of each employer of the taxpayer, taxpayer's spouse, and each individual covered by the qualified health plan or plans; and

(B) An indication of whether an employer offered minimum essential coverage, and, if so, the amount of the employee's required contribution for self-only coverage and the Exchange's determination of whether the employer coverage was affordable and provided minimum value;

(iii) The unique number that identifies the specific account of the taxpayer or responsible individual to enable data association from month to month;

(iv) The name and TIN, or date of birth if a TIN is not available, of each individual for whom the Exchange has granted an exemption from coverage under section 5000A(e) and the related regulations, the months for which the exemption is in effect, and the exemption certificate number; and

(v) Any other information specified by forms or instructions or in published guidance, see §601.601(d) of this chapter.

(c) Alternative to reporting applicable benchmark plan. An Exchange satisfies the requirement in paragraph (b)(1)(v) of this section if, on or before January 1 of each year after 2014, the Exchange provides a reasonable method that any individual may use to determine the premium for the applicable benchmark plan that applies to the individual's coverage family for the prior calendar year for purposes of determining the individual's premium tax credit.

(d) Electronic filing. An Exchange must submit the reports to the IRS required under this section in electronic format. The information reported monthly will be submitted to the IRS through the Department of Health and Human Services.

(e) Annual statement to be furnished to taxpayer--(1) In general. An Exchange must furnish to each taxpayer or responsible adult who enrolled, or whose family member enrolled, in a qualified health plan through the Exchange a written statement showing--

(i) The name and address of the taxpayer or responsible adult; and

(ii) The information described in paragraph (b)(1) of this section for the previous calendar year.

(2) Form of the statement. A statement required under this paragraph (e) may be made by furnishing to the taxpayer or responsible adult identified in the annual report a copy of the report filed with the IRS or on a substitute statement. A substitute statement must include the information required to be shown on the report filed with the IRS and must comply with requirements in published guidance (see §601.601(d)(2) of this chapter) relating to substitute statements. An IRS truncated taxpayer identifying number may be used as the identifying number for an individual in lieu of the identifying number appearing on the corresponding information report filed with the IRS.

(3) Time and manner for furnishing statements. An Exchange must furnish the statements required under this paragraph (e) on or before January 31 of the year following the calendar year of coverage. If mailed, the statement must be sent to the taxpayer's or responsible person's last known permanent address or, if no permanent address is known, to the taxpayer's or responsible person's temporary address. An

Exchange may furnish the statement electronically in accordance with paragraph (f) of this section.

(f) Electronic furnishing of statements--(1) In general. An Exchange required to furnish a statement under paragraph (e) of this section may furnish the statement to the taxpayer or responsible adult (recipient) in an electronic format in lieu of a paper format. An Exchange that meets the requirements of paragraphs (f)(2) through (7) of this section is treated as furnishing the statement in a timely manner.

(2) Consent--(i) In general. A recipient must have affirmatively consented to receive the statement in an electronic format. The consent may be made electronically in any manner that reasonably demonstrates that the recipient is able to access the statement in the electronic format in which it will be furnished. Alternatively, the consent may be made in a paper document that is confirmed electronically.

(ii) Withdrawal of consent. An Exchange may provide that the withdrawal of consent takes effect either on the date the Exchange receives it or on another date no more than 60 days later. The Exchange may provide that a request by the recipient for a paper statement will be treated as a withdrawal of consent to receive the statement in an electronic format. If the Exchange furnishes a statement after the withdrawal of consent takes effect, the recipient has not consented to receive the statement in electronic format.

(iii) Change in hardware or software requirements. If a change in the hardware or software required to access the statement creates a material risk that a recipient will not be able to access a statement, an Exchange must, prior to changing the hardware or software, notify the recipient. The notice must describe the revised hardware and

software required to access the statement and inform the recipient that a new consent to receive the statement in the revised electronic format must be provided to the Exchange. After implementing the revised hardware and software, the Exchange must obtain a new consent or confirmation of consent from the recipient to receive the statement electronically.

(iv) Examples. The following examples illustrate the rules of this paragraph (f)(2):

Example 1. Furnisher F sends Recipient R a letter stating that R may consent to receive the statement required under section 36B electronically on a web site instead of in a paper format. The letter contains instructions explaining how to consent to receive the statement electronically by accessing the web site, downloading and completing the consent document, and e-mailing the completed consent to F. The consent document posted on the web site uses the same electronic format that F will use for the electronically furnished statement. R reads the instructions and submits the consent in the manner provided in the instructions. R has consented to receive the statement required under section 36B electronically in the manner described in paragraph (f)(2)(i) of this section.

Example 2. Furnisher F sends Recipient R an e-mail stating that R may consent to receive the statement required under section 36B electronically instead of in a paper format. The e-mail contains an attachment instructing R how to consent to receive the statement required under section 36B electronically. The e-mail attachment uses the same electronic format that F will use for the electronically furnished statement. R opens the attachment, reads the instructions, and submits the consent in the manner provided in the instructions. R has consented to receive the statement required under section 36B electronically in the manner described in paragraph (f)(2)(i) of this section.

Example 3. Furnisher F posts a notice on its web site stating that Recipient R may receive the statement required under section 36B electronically instead of in a paper format. The web site contains instructions on how R may access a secure web page and consent to receive the statements electronically. R accesses the secure web page and follows the instructions for giving consent. R has consented to receive the statement required under section 36B electronically in the manner described in paragraph (f)(2)(i) of this section.

(3) Required disclosures--(i) In general. Prior to, or at the time of, an individual's consent, an Exchange must provide to the individual a clear and conspicuous disclosure statement containing each of the disclosures described in paragraphs (f)(3)(ii) through

(viii) of this section.

(ii) Paper statement. An Exchange must inform the recipient that the statement will be furnished on paper if the recipient does not consent to receive it electronically.

(iii) Scope and duration of consent. An Exchange must inform the recipient of the scope and duration of the consent. For example, the Exchange must inform the recipient whether the consent applies to each statement required to be furnished after the consent is given until it is withdrawn or only to the first statement required to be furnished following the consent.

(iv) Post-consent request for a paper statement. An Exchange must inform the recipient of any procedure for obtaining a paper copy of the recipient's statement after giving the consent described in paragraph (f)(2)(i) of this section and whether a request for a paper statement will be treated as a withdrawal of consent.

(v) Withdrawal of consent. An Exchange must inform the recipient that--

(A) The recipient may withdraw consent by writing (electronically or on paper) to the person or department whose name, mailing address, telephone number, and e-mail address is provided in the disclosure statement;

(B) An Exchange will confirm the withdrawal and the date on which it takes effect in writing (either electronically or on paper); and

(C) A withdrawal of consent does not apply to a statement that was furnished electronically in the manner described in this paragraph (f) before the date on which the withdrawal of consent takes effect.

(vi) Notice of termination. An Exchange must inform the recipient of the conditions under which the Exchange will cease furnishing statements electronically to

the recipient.

(vii) Updating information. An Exchange must inform the recipient of the procedures for updating the information needed to contact the recipient and notify the recipient of any change in the Exchange's contact information.

(viii) Hardware and software requirements. An Exchange must provide the recipient with a description of the hardware and software required to access, print, and retain the statement, and the date when the statement will no longer be available on the web site. The Exchange must advise the recipient that the statement may be required to be printed and attached to a Federal, State, or local income tax return.

(4) Format. The electronic version of the statement must contain all required information and comply with applicable published guidance (see §601.601(d) of this chapter) relating to substitute statements to recipients.

(5) Notice--(i) In general. If a statement is furnished on a web site, the Exchange must notify the recipient. The notice may be delivered by mail, electronic mail, or in person. The notice must provide instructions on how to access and print the statement and include the following statement in capital letters, "IMPORTANT TAX RETURN DOCUMENT AVAILABLE." If the notice is provided by electronic mail, this statement must be on the subject line of the electronic mail.

(ii) Undeliverable electronic address. If an electronic notice described in paragraph (f)(5)(i) of this section is returned as undeliverable, and the Exchange cannot obtain the correct electronic address from the Exchange's records or from the recipient, the Exchange must furnish the notice by mail or in person within 30 days after the electronic notice is returned.

(iii) Corrected statement. An Exchange must furnish a corrected statement to the recipient electronically if the original statement was furnished electronically. If the original statement was furnished through a web site posting, the Exchange must notify the recipient that it has posted the corrected statement on the web site in the manner described in paragraph (f)(5)(i) of this section within 30 days of the posting. The corrected statement or the notice must be furnished by mail or in person if--

(A) An electronic notice of the web site posting of an original statement or the corrected statement was returned as undeliverable; and

(B) The recipient has not provided a new e-mail address.

(6) Access period. Statements furnished on a web site must be retained on the web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday). The furnisher must maintain access to corrected statements that are posted on the web site through October 15 of the year following the calendar year to which the statements relate (or the first business day after October 15, if October 15 falls on a Saturday, Sunday, or legal holiday) or the date 90 days after the corrected forms are posted, whichever is later.

(7) Paper statements after withdrawal of consent. An Exchange must furnish a paper statement if a recipient withdraws consent to receive a statement electronically and the withdrawal takes effect before the statement is furnished. A paper statement furnished under this paragraph (f)(7) after the statement due date is timely if furnished within 30 days after the date the Exchange receives the withdrawal of consent.

(g) Effective/applicability date. This section applies for taxable years ending after December 31, 2013.

Beth Tucker

Deputy Commissioner for Operations Support.

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